



DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING CONCENTRATED ANIMAL FEEDING OPERATIONS

#01-51(WPCB)

Overview

The Indiana Department of Environmental Management (IDEM) has both amended rule language at 327 IAC 5-4-3 concerning the individual National Pollutant Discharge Elimination System (NPDES) permit and added new language at 327 IAC 15-15 concerning a NPDES general permit for concentrated animal feeding operations (CAFOs).

Citations Affected

Adds or Amends: 327 IAC 5-4-3; 327 IAC 15-15-1; 327 IAC 15-15-2; 327 IAC 15-15-3; 327 IAC 15-15-4; 327 IAC 15-15-5; 327 IAC 15-15-6; 327 IAC 15-15-7; 327 IAC 15-15-8; 327 IAC 15-15-9; 327 IAC 15-15-10; 327 IAC 15-15-11; 327 IAC 15-15-12; 327 IAC 15-15-13; 327 IAC 15-15-14; 327 IAC 15-15-15; 327 IAC 15-15-16; 327 IAC 15-15-17; 327 IAC 15-15-18; 327 IAC 15-15-19; and 327 IAC 15-15-20.

Affected Persons

Owners and operators of CAFOs are affected by this rule.

Reason(s) for the Rule

Based on a decision from the United States District Court for the Southern District of Indiana, IDEM is required to select one of three options for implementing NPDES permits for CAFOs in Indiana. IDEM believes that development of a general permit rule is the most time and resource effective means to comply with this court order. Further, amendments to the federal rules have occurred that require IDEM to update its rules.

IDEM has a separate program to regulate confined feeding operations (CFOs). This program is required under IC 13-18-10. However, the requirements of that program do not, in all instances, meet the requirements for a NPDES permit under federal law. IDEM believes the most effective way to address the issue of federal NPDES requirements of the Clean Water Act is in a separate rulemaking that considers all the alternatives available for compliance with the federal requirements.

Economic Impact of the Rule

This rule will have a low economic impact to the regulated community and to the state. The requirements are already in Federal regulations or other state rules.

Benefits of the Rule

The rule will not duplicate requirements in existing rules and be easier for the regulated community to comply with. The rule will also be consistent with the Federal requirement for CAFOs and the NPDES requirements.

Description of the Rulemaking Project

Amends 327 IAC 5-4-3 and adds 327 IAC 15-15. Under the Clean Water Act, CAFOs are point sources subject to the NPDES permit process. This requirement is found in federal regulations at 40 CFR 122.23(a). The term "CAFO" is defined in 40 CFR 122. This language has been adopted in Indiana and is found in the Indiana Administrative Code at 327 IAC 5-4-3 concerning special NPDES programs. A CAFO is required to obtain either an individual or general NPDES permit. The individual NPDES permit requirements were amended at 327 IAC 5-4-3 to include CAFOs. The general NPDES permit requirements were added at 327 IAC 15-15.

IDEM has added rule language for a new NPDES general permit for CAFOs at 327 IAC 15-15.

Scheduled Hearings

First Public Hearing postponed: April 9, 2003, Indiana Government Center South, Conference Center Room A, Indianapolis, Indiana.

First Public Hearing: May 8, 2003.

Second Public Hearing: January 14, 2004.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or

reducing any particular type of pollution.

7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:

(A) human, plant animal, or aquatic life; or

(B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The new and amended rules are consistent with federal regulations. The draft and proposed rule have been reviewed by the US. EPA to establish consistency.

Rulemaking Process

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published that contains the comments and the department's responses from the first comment period, a notice of first meeting/hearing, and

the draft rule. The Water Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/ hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with the Secretary of State.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Lynn West, Rules, Outreach and Planning Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).